



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/557,451	04/24/2000	Alireza Abaye	NORT-0049-US(11711BAUS01U	7600

21906 7590 04/14/2005

TROP PRUNER & HU, PC  
8554 KATY FREEWAY  
SUITE 100  
HOUSTON, TX 77024

EXAMINER
----------

PARTON, KEVIN S

ART UNIT	PAPER NUMBER
----------	--------------

2153

DATE MAILED: 04/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/557,451

**Applicant(s)**

ABAYE ET AL.

**Examiner**

Kevin Parton

**Art Unit**

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-9, 11-13, 16-21, 23, 24, 26, 27 and 29-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-9, 11-13, 16-21, 23, 24, 26 and 29-37 is/are allowed.
- 6) ☒ Claim(s) 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

TU

**DETAILED ACTION**

***Allowable Subject Matter***

1. Claims 2-9, 11-13, 16-21, 23, 24, 26, and 29-37 are allowed.
2. The indicated allowability of claim 27 is withdrawn in view of the newly discovered reference(s) to Borella et al. (USPN 6,442,141) and Jacobson (1999).

Rejections based on the newly cited reference(s) follow.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borella et al. (USPN 6,442,141) in view of Jacobson.
5. Regarding claim 27, Borella et al. (USPN 6,442,141) teach a system for predicting performance of a communications system with means to:
  - a. Assign performance parameters to each of plural components in the communications system, the plural components including a packet based network, the performance parameters comprising packet loss and packet delay (abstract; figure 6; column 3, lines 37-40).
  - b. Derive a quality indication based on the packet losses and packet delays (abstract; figure 6; column 3, lines 37-40).

Although the system disclosed by Borella et al. (USPN 6,442,141) shows substantial features of the claimed invention, it fails to disclose the assignment of a packet jitter parameter.

Nonetheless, these features are well known in the art and it would have been an obvious modification of the system disclosed by Borella et al. (USPN 6,442,141) as evidenced by Jacobson.

In an analogous art, Jacobson discloses a system for network performance prediction including the assignment of a packet jitter parameter (page 6).

Given the teaching of Jacobson, a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying the system of Borella et al. (USPN 6,442,141) by also utilizing a packet jitter parameter. This benefits the system by providing a better overall estimation of network performance.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Parton whose telephone number is (571)272-3958. The examiner can normally be reached on M-F 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached on (571)272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kevin Parton  
Examiner  
Art Unit 2153

ksp



GLENTON B. BURGESS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100